
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-03-PA-029
)	
Best Wok)	NAL/Acct. No. 200432400001
)	
Westville, New Jersey)	FRN: 0009-3455-62
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 26, 2004

By the District Director, Philadelphia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Best Wok has apparently violated Section 301 of the Communications Act of 1934, as amended (the “Act”).¹ The violation occurred because Best Wok operated radio transmitting equipment on the frequency 145.8376 MHz without a license issued by the FCC. We conclude that Best Wok is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On September 4, 2001, the FCC Enforcement Bureau received information that Best Wok, a restaurant in Westville, New Jersey, was operating radio transmitting equipment in the Two Meter Amateur Radio Service Band on the frequency 145.835 MHz without a license. On October 16, 2001, the FCC issued a letter to Best Wok at 1070 Delsea Drive, Westville, New Jersey 08093. The letter warned the addressee that it was in violation of Section 301 of the Act for operating radio transmitting equipment in the Two-Meter Amateur Radio Service Band (145.83 MHz) without a license and explained the penalties for continued operation including a monetary forfeiture. According to the certified mail return receipt from the Post Office, Best Wok received the warning letter on October 25, 2001.

3. On October 16, 2002, the FCC Enforcement Bureau received information that Best Wok was again operating on the frequency 145.835 MHz without a license. Therefore, on January 22, 2003, the FCC issued another letter to Best Wok warning that it was in violation of Section 301 of the Act for operating radio transmitting equipment in the Two-Meter Amateur Radio Service Band (145.835 MHz) without a license. According to the certified mail return receipt from the Post Office, Best Wok received the warning letter on January 27, 2003.

¹ 47 U.S.C. § 301.

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4. During the morning of February 28, 2003, an FCC agent with the Philadelphia Office drove to the Westville, New Jersey area to determine if Best Wok was operating radio transmitting equipment on the frequency 145.835 MHz. At approximately 10:45 a.m., the agent began monitoring a constant radio signal on or near the frequency 145.835 MHz. At 11:10 a.m., the agent used direction finding techniques to positively determine that the source of the transmissions was located at Best Wok, 1070 Delsea Drive, Westville, New Jersey.

5. At 11:30 a.m. on February 28, 2003, the agent entered Best Wok and inspected the radio transmitting equipment in the presence of the restaurant manager, Sae C. Hauwo. The agent found that Best Wok was operating a long distance cordless telephone system. The system was comprised of a base unit that was located under the counter of the restaurant and a mobile unit that was in Hauwo's vehicle. There were no identifying markings on the mobile unit but the base unit was marked with the Model Number GSM WLT-988. The FCC agent used frequency-measuring equipment to determine that the base unit actually operated on the frequency 145.8376 MHz and not the frequency 145.835 MHz as specified in the complaints. Hauwo stated that he installed the long range cordless telephone system so that his employees could answer customers' telephone calls while making deliveries in their vehicles. Hauwo stated that he purchased the long range cordless telephone system in another country and brought it into the United States to operate at the restaurant.

6. Hauwo and Best Wok were unable to provide the FCC agent with a license authorizing the operation of the radio transmitting equipment. Hauwo acknowledged that Best Wok received the October 16, 2001 unlicensed warning letter from the FCC Enforcement Bureau. Hauwo stated that when the restaurant received the letter, it ceased operation of the long range cordless telephone system and purchased an alternative set of radios from Radio Shack that operated on the Multi-Use Radio Service frequency 154.600 MHz. He said that because the alternative radios did not provide sufficient coverage, Best Wok began operating the long distance cordless telephone system again.

III. DISCUSSION

7. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act. On February 28, 2003, Best Wok operated radio transmitting equipment on the Two-Meter Amateur Radio Service frequency 145.8376 MHz. Neither Best Wok nor any of its employees held a license to operate a station in the Amateur Radio Service Band.

8. Based on the evidence before us, we find that Best Wok willfully² violated Section 301 of the Act. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

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303(1999) (“*Forfeiture Policy Statement*”),³ sets the base forfeiture amount for operating radio transmitting equipment without a license at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁴ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the Commission’s Rules,⁶ (“Rules”) Best Wok is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for operating radio-transmitting equipment on the frequency 145.8376 MHz without a license.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Best Wok SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200432400001 and FRN: 0009-3455-62.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554, and MUST INCLUDE THE NAL/Acct. No. 200432400001 and FRN: 0009-3455-62.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W.,

³ 47 C.F.R. § 1.80.

⁴ 47 U.S.C § 503(b)(2)(D).

⁵ 47 U.S.C § 503(b).

⁶ 47 C.F.R. §§ 0.111, and 0.311.

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Washington, D.C. 20554.⁷

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Best Wok, 1070 Delsea Drive, Westville, New Jersey 08093.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

Attachment A: Condensed List of Small Entities

⁷ See 47 C.F.R. § 1.1914.